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FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
3003 N. Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Black Mountain Sewer Corporation

DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF BLACK MOUNTAIN
SEWER CORPORATION, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR
VALUE OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN
ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: SW-02361A-08-0609

**NOTICE OF FILING DIRECT
TESTIMONY (PHASE 2)**

Black Mountain Sewer Corporation hereby files the Direct Testimony of
Gregory S. Sorensen (Phase 2).

RESPECTFULLY SUBMITTED this 16th day of March, 2012.

FENNEMORE CRAIG, P.C.

By

Jay L. Shapiro
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Attorneys for Black Mountain Sewer Corporation

ORIGINAL and thirteen (13) copies
of the foregoing were filed
this 16th day of March, 2012, with:

Docket Control
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

1 **Copy of the foregoing hand-delivered**
2 this 16th day of March, 2012, to:

3 Dwight D. Nodes
4 Assistant Chief Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
7 1200 W. Washington Street
8 Phoenix, AZ 85007

9 Robin Mitchell
10 Legal Division
11 Arizona Corporation Commission
12 1200 W. Washington Street
13 Phoenix, AZ 85007

14 **Copy of the foregoing mailed/mailed**
15 this 16th day of March, 2012, to:

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5 6854308.1/016040.0038

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7
8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE
10 APPLICATION OF BLACK MOUNTAIN
11 SEWER CORPORATION, AN ARIZONA
12 CORPORATION, FOR A
13 DETERMINATION OF THE FAIR
14 VALUE OF ITS UTILITY PLANT AND
15 PROPERTY AND FOR INCREASES IN
16 ITS RATES AND CHARGES FOR
17 UTILITY SERVICE BASED THEREON.

DOCKET NO: SW-02361A-08-0609

18 **DIRECT TESTIMONY OF**
19 **GREGORY S. SORENSEN**
20 **(PHASE 2)**

21 **March 16, 2012**
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1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Greg Sorensen. My business address is 12725 W. Indian School Road,
4 Suite D-101, Avondale, AZ 85392.

5 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

6 A. On behalf of Black Mountain Sewer Corporation ("BMSC" or "Company").

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by Liberty Water as Vice President and General Manager. Liberty
9 Water is BMSC's sole shareholder. In that capacity, I am responsible for Liberty
10 Water's operations in Texas, Missouri, Illinois, and Arizona, including operation of
11 BMSC in the areas of customer service, operations, engineering, developer
12 services, conservation, and human resources.

13 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
14 **PROCEEDING?**

15 A. Yes. My prefiled direct, rebuttal, and rejoinder testimonies were entered into
16 evidence in the first phase of this docket. I also testified during the hearings before
17 the Commission that preceded Decision No. 71865 (September 1, 2010) (the
18 "Decision").

19 **Q. WHAT IS THE PURPOSE OF THIS (PHASE 2) DIRECT TESTIMONY?**

20 A. I will provide an update of the events that have taken place since the Decision was
21 issued and discuss the efforts BMSC has made to comply with the Decision and the
22 Wastewater Treatment Plant Closure Agreement ("Closure Agreement"). I will
23 also explain the Company's position regarding the BHOA's request for relief in
24 this phase of this proceeding.

25

26

1 **II. POST-DECISION COMPLIANCE, ACTIVITIES AND EVENTS**

2 **Q. IS BMSC CURRENTLY IN FULL COMPLIANCE WITH ALL**
3 **COMMISSION AND OTHER REGULATORY REQUIREMENTS?**

4 **A. Yes.**

5 **Q. IS THE PLANT STILL OPERATING?**

6 **A. Yes.** We are treating 120,000 gpd of wastewater daily and producing effluent that
7 is being purchased by the Resort.

8 **Q. DID THE COMMISSION ORDER THE PLANT TO BE CLOSED?**

9 **A. No.** The Commission only approved a means of dealing with the plant closure
10 costs, finding that the Closure Agreement between BMSC and the BHOA
11 "provides an appropriate and creative solution for what [the Commission]
12 believe[s] is a unique set of circumstances."¹ To date, despite our best efforts,
13 BMSC has not been able to reach an agreement with the Resort that would allow us
14 to close the plant.

15 **Q. WHAT STEPS HAVE YOU TAKEN TOWARDS CLOSURE SINCE THE**
16 **DECISION WAS ISSUED?**

17 **A.** Promptly after the Decision was issued, representatives from the BHOA and
18 Company met with representatives from the Resort to discuss termination of the
19 March 2001 Effluent Delivery Agreement ("Effluent Agreement") between BMSC
20 and the Boulders Resort. That meeting led to several months of discussions of
21 alternatives for the Resort to replace the effluent they buy from us to irrigate their
22 golf course.

23
24
25
26 ¹ Decision at 52:1-8, 53:22-23.

1 **Q. WHAT ALTERNATIVES FOR THE RESORT HAVE YOU CONSIDERED?**

2 A. We have evaluated the following alternatives, and I will discuss each alternative in
3 detail:

- 4 • Additional storage for the Resort's irrigation water needs;
- 5 • Building a new wastewater treatment plant on the Resort's property;
- 6 • Buying replacement treatment capacity and effluent water from the Town of
7 Cave Creek;
- 8 • Expanding the City of Scottsdale's reclaimed water system to provide the
9 Resort with replacement water; and
- 10 • Buying replacement water from a Town of Carefree well.

11 **Q. PLEASE EXPLAIN EACH OF THE ALTERNATIVES FOR THE RESORT**
12 **YOU HAVE CONSIDERED.**

13 A. The Resort told us they thought the issue could be resolved with additional storage.
14 BMSC paid for its engineers to evaluate the possibility of using the current plant
15 site as a storage facility for the Resort after demolition had occurred.² Our
16 engineers also evaluated the cost of deepening the Resort's existing lakes to create
17 additional storage. We provided that information to the Resort but never heard
18 anything further about that possible alternative. As a result, we do not know
19 exactly how much storage the Resort actually needs, or why this alternative won't
20 work.

21 We also looked at constructing a new plant on a site within the golf course
22 and owned by the Resort. But there are problems with this alternative. First,
23 notwithstanding BMSC's compliance with applicable laws and regulations and
24 plant upgrades, given the history and sensitivity of certain members of the
25

26 ² See Exhibit GS-DT2-A.

1 community to odor, noise and aesthetics in this community, it is estimated that a
2 replacement plant would be in the range of \$30 per gallon to construct, or roughly
3 \$3.6 million. This is significantly more expensive than the estimated costs of the
4 closure project. Second, the new plant would still be roughly 350 feet from homes.
5 I don't think we could get approval to site a plant that close to homes without the
6 homeowners' agreement, and I don't find it likely that the homeowners would
7 agree.

8 We have also spoken with the Town of Cave Creek regarding possibilities
9 of buying capacity at their plant as well as bringing effluent from their plant to the
10 Resort. They stated that capacity would be \$35/gallon, plus \$4.50 per 1,000
11 gallons treated. Both those prices are significantly higher than the costs under our
12 contract with the City of Scottsdale.

13 Finally, we discussed with the City of Scottsdale the possible expansion of
14 its reclaimed water system, and performed some analysis of a Town of Carefree
15 well and its capability of supplying water to the golf course. However, the City
16 told us that using groundwater would violate their RWDS agreement with the
17 Resort.

18 **Q. DOES THE COMPANY HAVE TO SEND ITS WASTEWATER TO CAVE**
19 **CREEK FOR THE RESORT TO BUY EFFLUENT FROM CAVE CREEK?**

20 **A.** We don't believe so and inquired recently whether it would be possible to just
21 interconnect with the Town's effluent system and purchase effluent on a per acre
22 foot basis. We were told this may be possible. However, we estimate the cost to
23 interconnect with their effluent system to be in the neighborhood of \$1 million, and
24 the current price of their effluent is about \$318 per acre-foot. We do not know if
25 the Resort has also considered this option.

26

1 Q. HAS THE BHOA BEEN A PARTICIPANT IN THESE EFFORTS?

2 A. Absolutely, as was the Resort until last summer.

3 Q. HAS THE BHOA PROVIDED OTHER ALTERNATIVES FOR THE
4 COMPANY TO EVALUATE?

5 A. Yes. At the BHOA's request, we also recently evaluated the possibility of keeping
6 the plant open during the two roughly one-month periods of the year when the
7 Resort claims it absolutely must have our effluent in order to exist. We believe that
8 this option can be done, but is not without its own inherent challenges.

9 Q. WHAT SORT OF CHALLENGES?

10 A. When you have intermittent operating periods, you have a ramp-up and ramp-down
11 of the plant operations. During those start-up and shut down periods, there could
12 be additional odors, noise, and truck traffic at the plant each time we have to reseed
13 and then clean-up. It is normal for a plant in start-up mode to "ease" into
14 operation, during which time there could be process instability, resulting in the
15 aforementioned increased odor possibility, along with decreased effluent quality.
16 Also, when a plant is temporarily "moth-balled," it can accelerate the wear and tear
17 on certain equipment.

18 Q. WOULD THIS ALTERNATIVE ELIMINATE THE CLOSURE COSTS?

19 A. Only the decommissioning costs. We would still need to expand the downstream
20 piping from the plant and to purchase additional capacity from the City of
21 Scottsdale. We would also not have the eventual sale of the plant site.

22 Q. ARE THERE OTHER 'OUTSIDE THE BOX' ALTERNATIVES THAT THE
23 COMPANY HAS CONSIDERED?

24 A. Yes, in fact we looked into just covering the entire plant with a structure, but it
25 isn't like we can just enclose it in a glass bubble. Rather, multiple parts of the
26 plant would have to be retrofitted so that they can be covered, and the entire plant

1 would need to be enclosed in a structure. This retrofitting would have a hefty price
2 tag – roughly \$1 million for the structure, plus additional significant costs for
3 additional odor control, noise control, electrical facilities upgrades, and aesthetics
4 of the exterior to better blend-in with the surrounding neighborhood. Of course,
5 after all that investment, the neighbors would still have a wastewater plant at its
6 current location.

7 **Q. THANK YOU. IN ADDITION TO YOUR DISCUSSIONS WITH BHOA**
8 **AND THE RESORT, AND YOUR ANALYSES OF ALTERNATIVE**
9 **SOLUTIONS, HAVE YOU TAKEN ANY OTHER STEPS TOWARDS**
10 **CLOSING THE PLANT?**

11 A. Yes. We have submitted a proposed amendment to our agreement with the City of
12 Scottsdale for purchasing effluent, another condition of the closure. We also had a
13 third party engineer perform an estimate of the cost and feasibility of downstream
14 piping expansion requirement and routing evaluations, without full hydraulic
15 analysis.

16 **Q. HAVE THERE BEEN ANY OTHER SIGNIFICANT EVENTS THAT**
17 **IMPACT THE PLANT'S CLOSURE?**

18 A. Mr. Robert Marshall is suing us in Superior Court.

19 **Q. WHO IS MR. MARSHALL?**

20 A. He is a customer of the Company and the homeowner that, in 2003, bought the
21 home located roughly 85 feet from the plant. He filed suit in February 2011
22 seeking closure of the plant and an unspecified amount of damages.

23 **Q. THE PLANT WAS THERE WHEN MR. MARSHALL MOVED IN?**

24 A. Yes, the plant has been there since 1969, before Mr. Marshall moved in and before
25 the home in which he lives was built. As we understand the history, the Resort's
26 predecessor in interest, the Boulders Joint Venture, formed the utility and built the

1 plant, and then built the resort and golf courses and sold off the lots that now
2 contain the homes in close proximity to the plant.

3 **Q. IS BMSC DEFENDING MR. MARSHALL'S LAWSUIT?**

4 A. Yes. It is just one more source of cost we are incurring regarding the plant. Trial
5 is currently scheduled for January 2013.

6 **Q. WHY NOT JUST CLOSE THE PLANT TO GET RID OF MR.**
7 **MARSHALL'S LAWSUIT AND SATISFY THE BHOA?**

8 A. Although we believe that the Marshall lawsuit is without merit, we would
9 nevertheless close the plant but for the Resort having threatened to sue us. I have
10 attached the demand letter the Resort sent us last summer as **Exhibit GS-DT2-B**.
11 Both the Closure Agreement and the Decision make the termination of the
12 agreement with the Resort a condition precedent to the plant closure.³

13 **Q. WHAT CAN THE RESORT DO?**

14 A. The Resort has made clear that it will not accept an order of the Commission
15 requiring BMSC to close the plant.⁴ If the Resort challenges closure, it could also
16 sue us for damages if we close the plant to comply with a Commission order.
17 Given that the Resort is claiming it will cost upwards of \$10 million to replace our
18 effluent, compliance with a Closure Order could result in astronomical rate
19 increases related to the plant closure. Those costs would come from the legal costs
20 of defending an appeal, and from the chance of a court agreeing with the Resort
21 and awarding damages (we would disagree with such a decision but litigation is
22 often uncertain).

23
24 ³ See Decision at 51:15-21; Boulders Homeowners' Association's Motion for Plant Closure Order, filed
25 June 15, 2011 at Exhibit C, paragraph 2(a)(iv).

26 ⁴ See, e.g., Reporter's Transcript of Proceedings, Procedural Conference, February 7, 2012 at 13-14, 18-
19, 33-34.

1 **Q. DO YOU HAVE TO COMPLY WITH AN ORDER TO CLOSE THE PLANT**
2 **BEFORE YOU KNOW WHETHER THE RESORT WILL RECOVER**
3 **DAMAGES?**

4 A. If the Commission orders us to close the plant it is hard to envision us not
5 complying with the order. I assume it would be a legally binding order. BMSC is
6 owned by Liberty Utilities, which owns and operates 22 utilities in 5 states,
7 providing 120,000 customers with electric, water, and wastewater utility service.
8 Liberty Utilities cannot afford to fail to comply with a Public Utilities Commission
9 ("PUC") order. And Liberty Utilities' parent is Algonquin Power & Utilities
10 Corporation (APUC), a publicly traded company on the Toronto Stock Exchange.
11 APUC owns approximately 70 hydro and renewable energy facilities throughout
12 North America. APUC cannot afford to have any of its utilities failing to comply
13 with PUC orders as that would affect the market's view of APUC's regulatory
14 relationships and ability to continue to grow its regulated and unregulated affiliates.

15 **Q. SO, ARE YOU SAYING BMSC WOULD CLOSE THE PLANT AND THEN,**
16 **IF IT WAS SUED, SEEK TO RECOVER THE COSTS OF THAT LAWSUIT**
17 **AS PART OF THE COST OF SERVICE?**

18 A. Yes. What other choice would we have? The Commission, a regulatory agency
19 with which we have to comply, would be ordering us to close a fully compliant,
20 used and useful asset. We have a reasonable expectation that we will be made
21 whole for all of the costs associated with this closure project, whether they be the
22 costs of actually closing it, the costs of keeping it open until we can close it, and/or
23 the costs we incur because we did close it. This concept is the essence of our
24 ACC-sanctioned agreement with the BHOA to close the plant.

1 Q. MR. SORESENSEN, IT SOUNDS LIKE YOU ARE IN A DIFFICULT
2 POSITION.

3 A. A very difficult position. The BHOA is asking the Commission to force closure of
4 the plant, which will result in the Resort suing BMSC, which is already being sued
5 by Mr. Marshall. In the end, all of these legal issues will affect the Company and
6 its ratepayers.

7 Q. ARE THERE OTHER PRE-CLOSURE STEPS TO BE COMPLETED?

8 A. At this juncture, there are no other steps we can take until this tug of war between
9 the BHOA and the Resort is resolved.

10 III. BHOA REQUEST FOR ORDER OF CLOSURE

11 Q. WHAT DO YOU UNDERSTAND TO BE THE PURPOSE OF THIS
12 SECOND PHASE OF THIS RATE PROCEEDING?

13 A. We understand that the Commission wishes to consider whether to order BMSC to
14 close its wastewater treatment plant.

15 Q. DOES BMSC OPPOSE AN ORDER OF THE COMMISSION REQUIRING
16 CLOSURE OF THE PLANT?

17 A. Notwithstanding that BMSC operates the plant properly and in compliance with the
18 law, we recognize the BHOA's interest in closing the plant – that's why we
19 developed a pathway agreement with them and why we asked the Commission to
20 approve that plan. But we have always made it clear that the Resort situation has
21 to be addressed. At this point, our position really is this: we want to make sure the
22 Commission understands that BMSC has never been ordered to close the plant; we
23 have undertaken every step reasonably possible to meet the BHOA's concerns and
24 interest in closing the plant; and with the Resort's position, the costs and litigation
25 risk of closure are higher than we anticipated. As a result, any closure order would
26 have to provide for cost recovery as I discussed earlier in this testimony.

1 Q. SO BASICALLY IF THE COMMISSION AGREES WITH THE BHOA AND
2 ORDERS YOU TO CLOSE THE PLANT, YOU WANT THE COMMISSION
3 TO REQUIRE THE RATEPAYERS TO INDEMNIFY THE COMPANY
4 FROM THE RESORT?

5 A. That is essentially what we need as I discussed above. The Company is now stuck
6 in the middle between the desires of its residential ratepayers and the needs of its
7 largest commercial ratepayer – the Resort. Whatever we are directed to do, it will
8 be because the Commission determined it was in the public interest. In that case,
9 we need assurance that we will be allowed to recover all of the costs reasonably
10 and prudently incurred to remove this used and useful, fully-compliant utility
11 property.

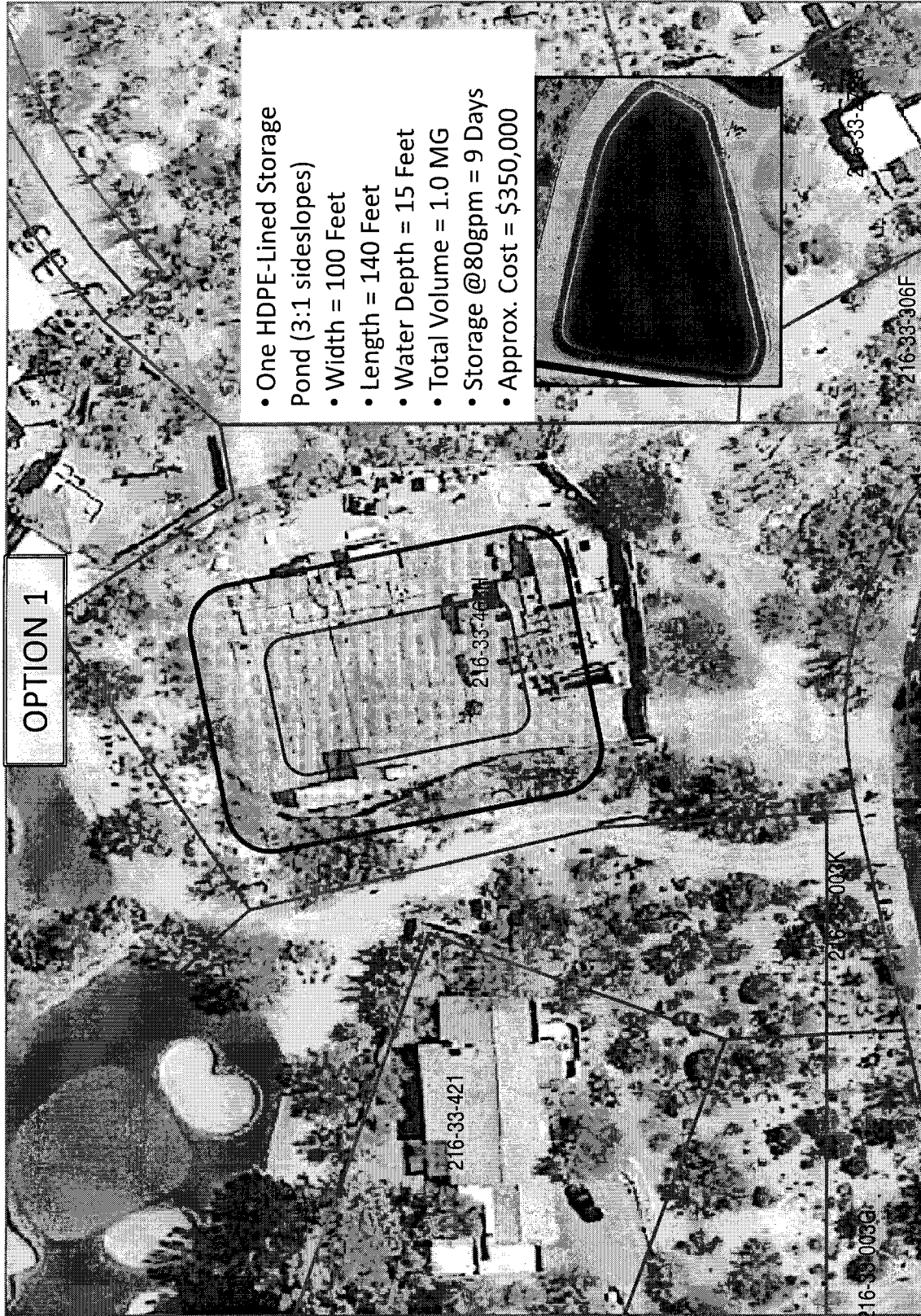
12 Q. WHY DO YOU BELIEVE THAT'S FAIR?

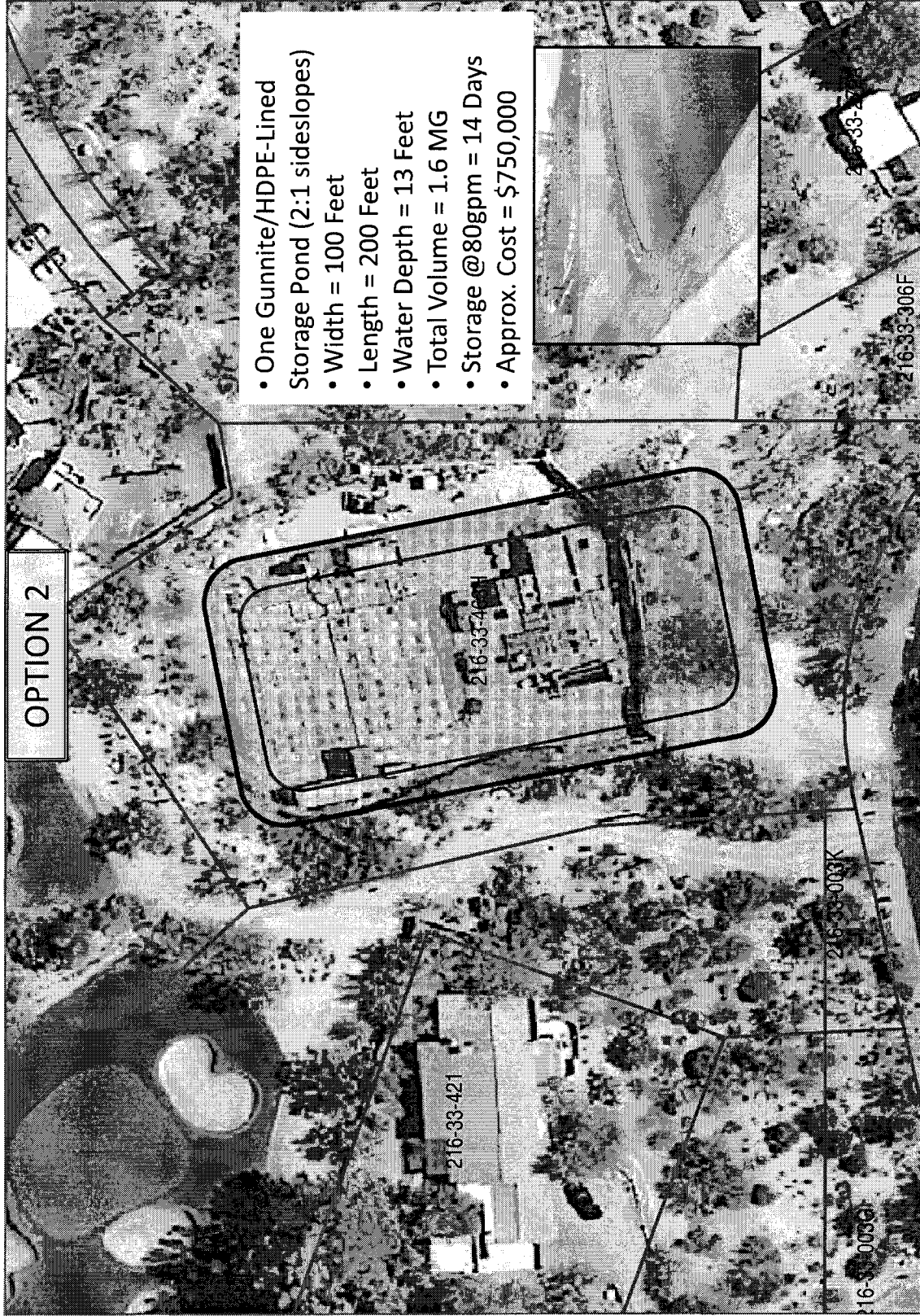
13 A. If it is in the public interest to close the plant (which is used and useful and in
14 regulatory compliance), then we are entitled to recover the costs of doing so which,
15 in this case, may also include being sued by the Resort for closing the plant in
16 order to comply with a Commission order.

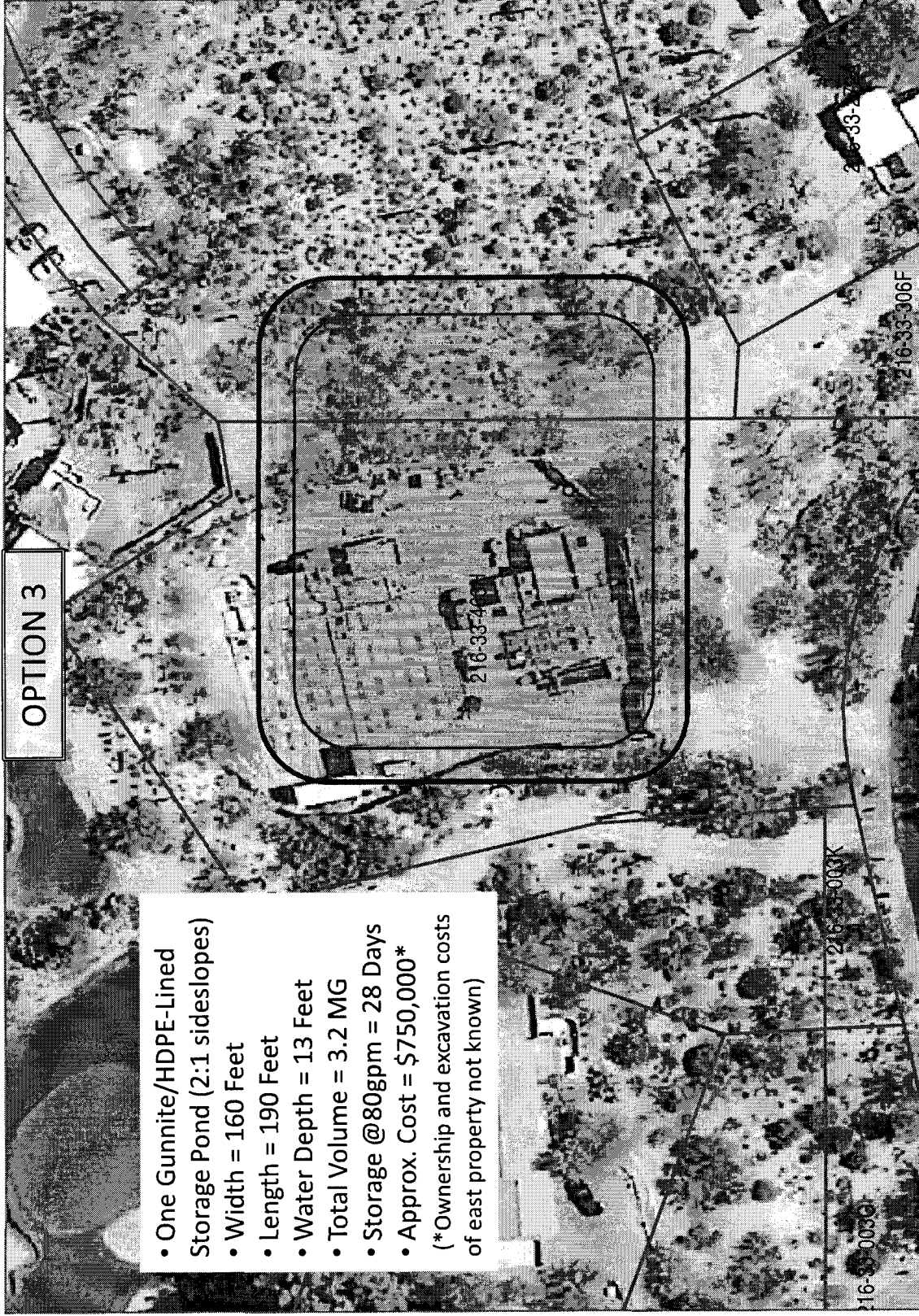
17 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

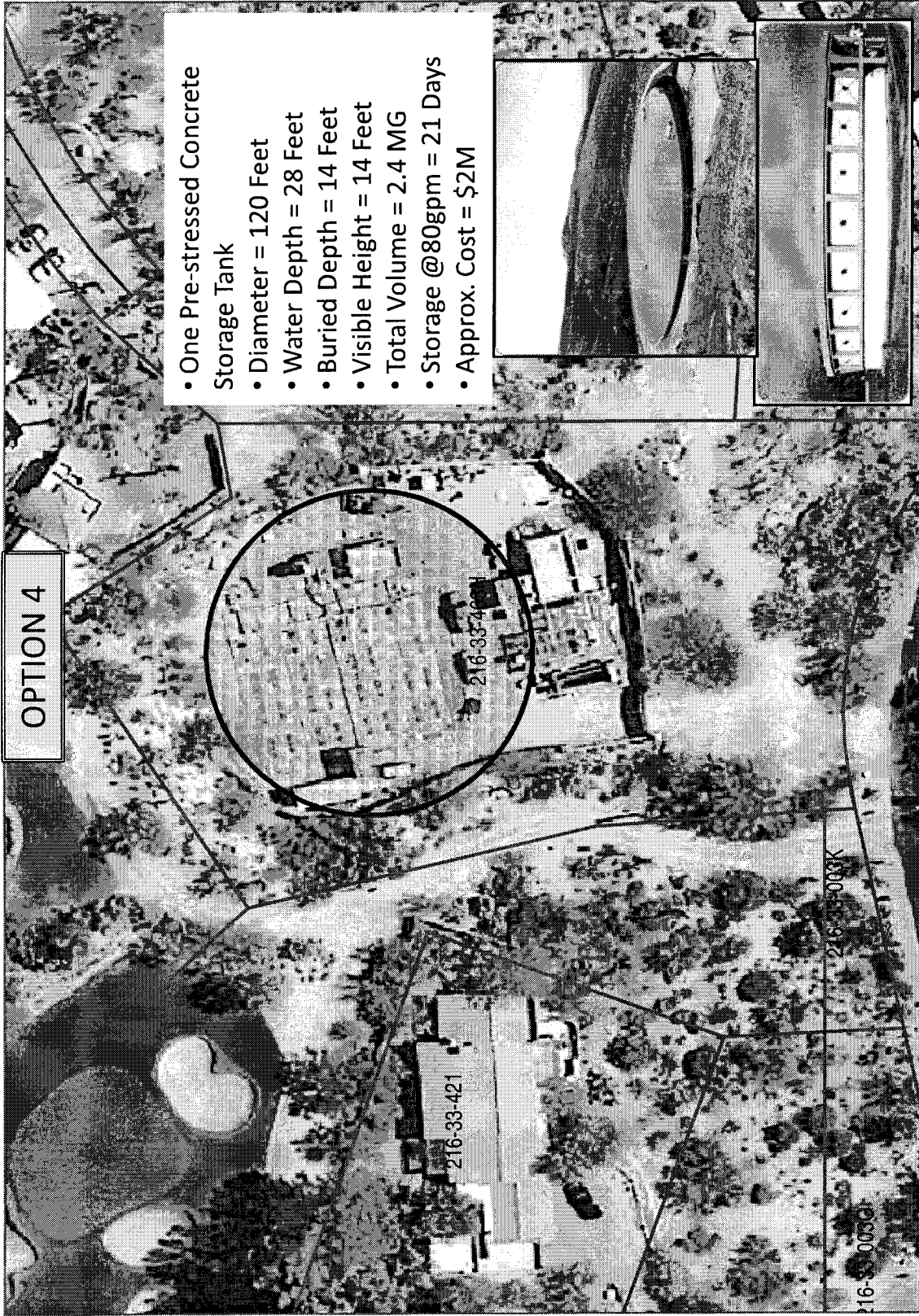
18 A. Yes.
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Exhibit GS-DT2-A



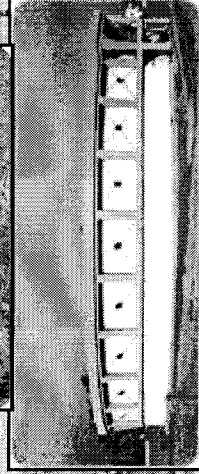
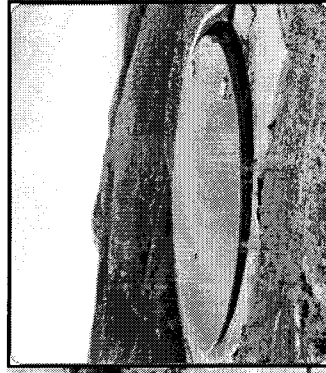


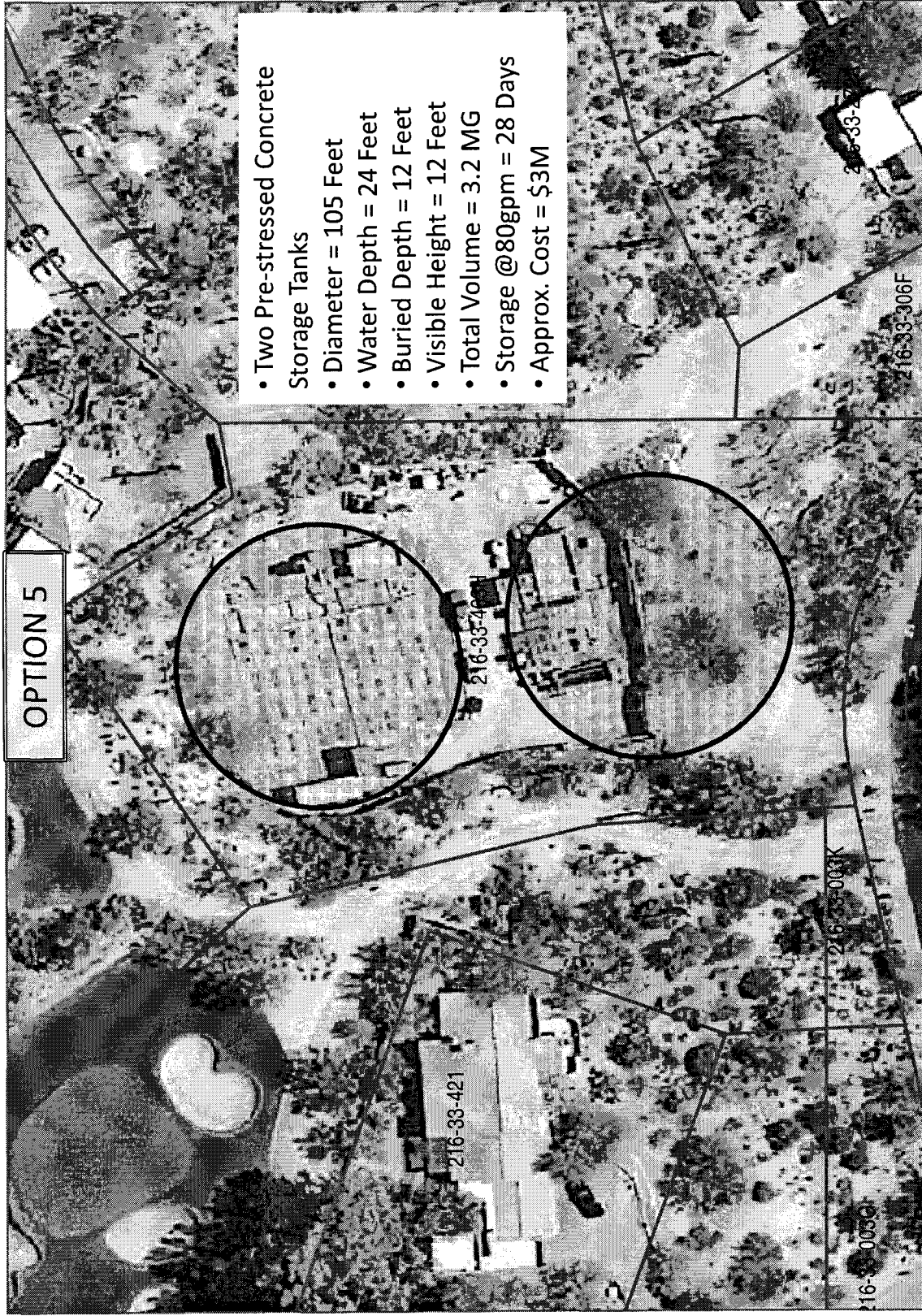


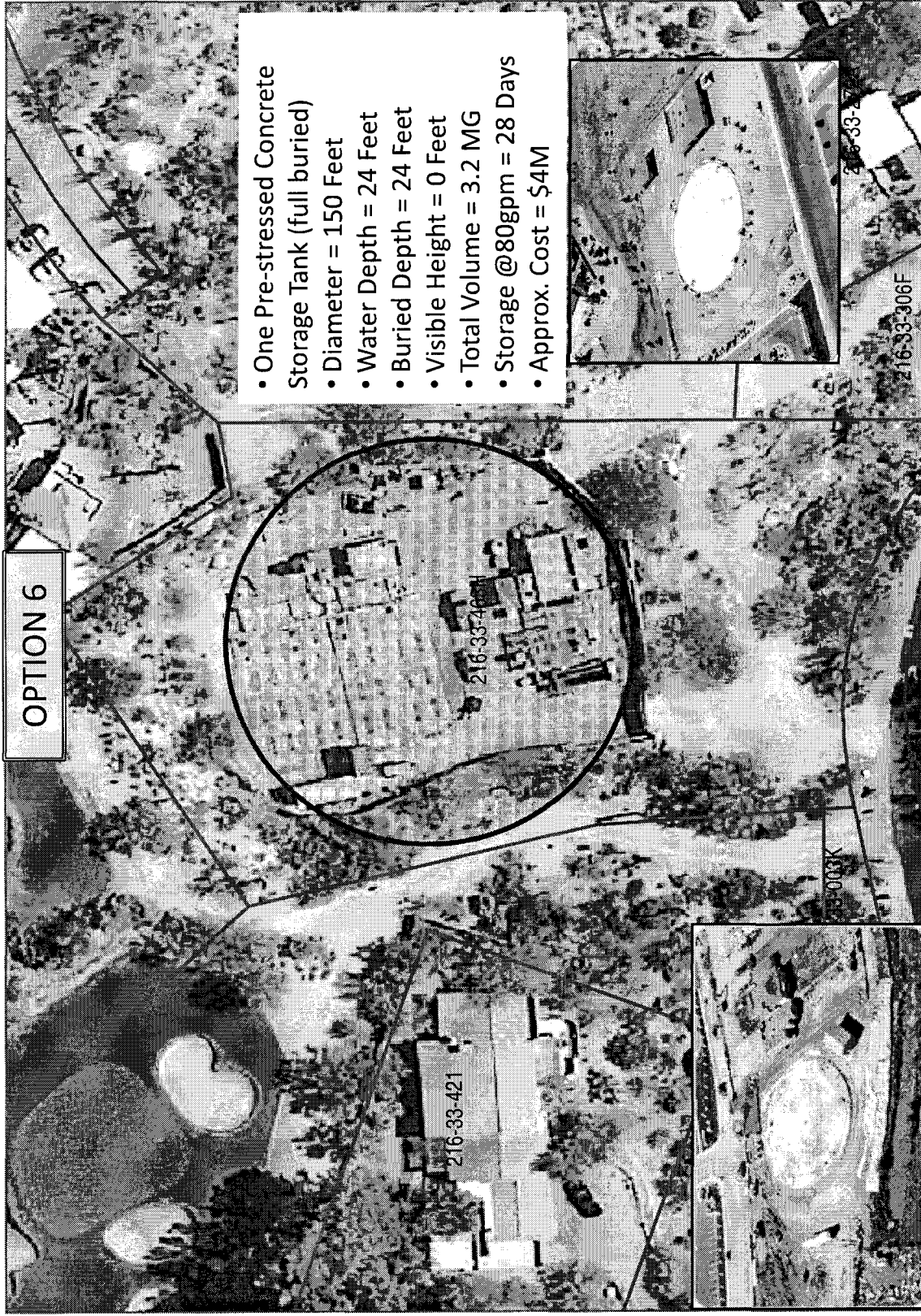


OPTION 4

- One Pre-stressed Concrete Storage Tank
- Diameter = 120 Feet
- Water Depth = 28 Feet
- Buried Depth = 14 Feet
- Visible Height = 14 Feet
- Total Volume = 2.4 MG
- Storage @80gpm = 21 Days
- Approx. Cost = \$2M







- Deepening of Existing S. Pond
- Excavation Length = 240 Feet
- Excavation Width = 100 Feet
- Existing Depth = 8 Feet
- Excavation Avg. Depth = +7 Feet
- Total Added Volume = 1.2 MG
- Storage @80gpm = 10 Days
- Approx. Cost = \$250,000*

(* Excavation conditions unknown)

- Deepening of Existing S. Pond
 - Excavation Length = 240 Feet
 - Excavation Width = 100 Feet
 - Existing Depth = 8 Feet
 - Excavation Avg. Depth = +7 Feet
 - Total Added Volume = 1.2 MG
 - Storage @80gpm = 10 Days
 - Approx. Cost = \$250,000*
- (*Excavation conditions unknown)

Exhibit GS-DT2-B

Fredric D. Bellamy
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E-mail: fbellamy@rcalaw.com

June 3, 2011

HAND-DELIVERED

Jay Shapiro, Esq.
Fennemore Craig
3003 N. Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913

Re: The Boulders v. Black Mountain Sewer Corporation

Dear Mr. Shapiro:

We are writing to you in your capacity as counsel for Black Mountain Sewer Corporation ("Black Mountain Sewer"). Please be advised that Michele Van Quathem and I have been engaged by Wind P1 Mortgage Borrower, LLC, doing business as The Boulders ("The Boulders"), along with co-counsel Janet Betts and Danelle Kelling, to represent it in connection with enforcing its rights under the 2001 Effluent Delivery Agreement with Black Mountain Sewer. In accordance with our instructions, pursuant to Paragraph 14(a), we formally invoke and require that Black Mountain Sewer's Designated Representative personally meet and confer with us at the earliest practicable date to engage in good-faith negotiations to resolve our pending dispute. Pursuant to Paragraph 14(b), if we are unable to resolve this dispute promptly, we reserve the right to initiate binding arbitration of all issues subject to arbitration, including but not limited to damages. In invoking this process, we are not waiving our right to pursue any and all legal and equitable remedies through the courts or in any appropriate administrative proceedings, through direct legal actions or through intervention in existing actions or proceedings, in our sole discretion.

We have formally invoked this meeting process under our contract in light of the long and disappointing history of informal discussions with Black Mountain Sewer. We have attempted in good faith to cooperate with Black Mountain Sewer to find appropriate solutions, but Black Mountain Sewer to date has failed to provide any assurances of its intentions to honor its contractual obligations to The Boulders, or to provide suitable replacement water without detriment to The Boulders. In fact, in reviewing the history of these discussions, Black Mountain Sewer has repeatedly appeared to disregard or dismiss those obligations. Moreover, to add insult to injury, in expressly seeking to terminate Black

Mountain Sewer's contractual obligations to The Boulders without securing replacement water or offering any compensation (or even offering the land at a substantially reduced purchase price), the draft document you just forwarded to Ms. Kelling underscores Black Mountain Sewer's unjustified and irresponsible refusal to honor or even to acknowledge those obligations.

Consistent with your client's refusal to acknowledge its obligation, Black Mountain Sewer has stated that it has no intention of properly compensating The Boulders in the event that Black Mountain Sewer elects to close its wastewater treatment plant. Black Mountain Sewer's failure to acknowledge its continuing obligation to The Boulders not only constitutes an anticipatory breach of contract, but also demonstrates bad faith in regard to Black Mountain Sewer's obligations. Accordingly, we have been retained to pursue appropriate legal action if Black Mountain Sewer does not promptly propose an appropriate resolution acceptable to The Boulders. In addition to seeking appropriate declaratory and other equitable relief as well as damages, we will also seek reimbursement of The Boulders' attorneys' fees and expenses.

There is no reasonable question that Black Mountain Sewer bears the legal responsibility to make appropriate arrangements to provide The Boulders with suitable replacement water after Black Mountain Sewer ceases operations at its wastewater treatment plant. The Effluent Delivery Agreement contractually obligates Black Mountain Sewer to provide 150,000 gallons per day to The Boulders at the contractually specified price for the 10-year term remaining under the contract, or through 2021. Moreover, pursuant to Paragraph 6, subparagraphs (a) and (c), Black Mountain Sewer made specific representations and covenants in the agreement, including to "[m]ake such repairs, upgrades and improvements to the Boulders East Plant as may be necessary" to operate the facility to meet Black Mountain Sewer's obligations to The Boulders. By failing to address the facility's odor issues in a timely fashion to the residents' satisfaction, and instead allowing the situation to continue to the point where Black Mountain Sewer has instead negotiated an intended closure plan, Black Mountain Sewer has violated its covenants and acted in a fashion intended to deprive The Boulders of its benefits under the agreement.

Moreover, The Boulders had the legal right to rely on these representations, covenants and promises under the agreement, and in fact, has done so. But for the existence of these legally binding commitments by Black Mountain Sewer, The Boulders would undoubtedly have pursued other water sources and solutions over the last decade. However, having relied, as we were entitled to do, on Black Mountain Sewer's 20-year contractual commitment, options that might have been more cost-effective if pursued years ago are now either unavailable, impractical or infeasible because of the extraordinary costs. Black Mountain Sewer's conduct has left The Boulders in this highly problematic situation, and Black Mountain Sewer is legally responsible to The Boulders to address this situation and take steps to mitigate The Boulders' existing and potential damages. Quite simply, and with

no pun intended, Black Mountain Sewer has acted as if it is somehow acceptable to leave The Boulders "high and dry" while pursuing an intended plant closure.

Leaving aside the fact that Black Mountain Sewer's conduct leading up to the intended plant closure was itself a breach of the agreement with The Boulders, Black Mountain Sewer cannot simply terminate its obligations to The Boulders without its consent. Indeed, we are troubled by Black Mountain Sewer's negotiated condition in its intended closure plan that specifies that it be allowed to terminate the obligation to The Boulders at little to no economic cost. That condition could not have been stipulated in good faith because, as already noted, The Boulders has relied on that agreement, and it is Black Mountain Sewer's responsibility to mitigate (or, if necessary, compensate) The Boulders under these circumstances.

Specifically, we expect and demand that Black Mountain Sewer agree to the following terms:

(1) Black Mountain Sewer must cooperate with and assist The Boulders in making arrangements for replacement water pursuant to a plan that will ensure that such water is available, and will be delivered without any interruption in service created by the closure of the wastewater treatment plant, or any reduction in its service leading up to that closure.

(2) In the event that any replacement water secured under paragraph 1 above involves additional costs beyond the amount that would have been owed by The Boulders under the Effluent Delivery Agreement, then Black Mountain Sewer will accept responsibility for paying or reimbursing these costs.

(3) Black Mountain Sewer will not continue to represent or imply to the Arizona Corporation Commission or any other public entity that Black Mountain Sewer may be able to evade its financial responsibility to The Boulders. We do not consent to any such representation and, in fact, are sending you this letter to inform you explicitly that we reserve and intend to enforce our legal rights in this matter to the fullest extent possible, unless a good-faith effort by Black Mountain Sewer results in a mutually acceptable resolution within the next 30 days.

(4) Black Mountain Sewer will agree to keep The Boulders fully informed about, and will consult with, The Boulders and its legal counsel regarding any legal action, including court cases and administrative proceedings, as well as enforcement actions or government investigations. Black Mountain Sewer must agree that it will not oppose any motion or other effort by The Boulders to intervene in any such matters.

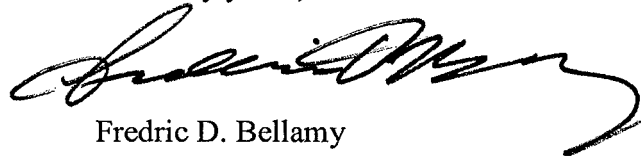
Jay Shapiro, Esq.
June 3, 2011
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RYLEY CARLOCK
& APPLEWHITE
Attorneys

In exchange for Black Mountain Sewer's agreement to these terms, The Boulders will agree not to pursue its current damages or attorneys' fees and expenses from Black Mountain Sewer. We are willing to waive such claims in exchange for a prompt agreement by Black Mountain Sewer to honor its obligations because we believe that continued cooperation and compromise would be in the best interests of the parties and of the community. However, please understand that we reserve all rights to prosecute any and all available claims, if we are forced to take legal or other action to protect our interests in this matter.

Pursuant to Paragraph 14(a) of the Effluent Delivery Agreement, we are sending copies of this letter to the designated addressees for receipt of formal notices. Please advise us at your earliest opportunity of your and your client's availability for a meeting with us to discuss and attempt to resolve this dispute.

Sincerely yours,



Fredric D. Bellamy

FDB/sdd

cc: Black Mountain Sewer Company (via Federal Express)
c/o Mr. Greg Sorensen
Suite 201, 1962 Canso Road
Sidney, British Columbia
Canada V8L 5V5

Algonquin Power Income Fund (via Federal Express)
c/o Mr. Peter Kampian
Alonquin Power Corporation, Inc.
#210, 2085 Hurontario Street
Mississauga, Ontario L5A 4G1